



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

On November 17, 2015 a teleconference hearing was scheduled to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on September 11, 2015. The Landlords filed seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid rent or utilities; money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

A systemic problem occurred with the telephone access codes which led the Arbitrator to believe that no one appeared at the November 17, 2015 hearing. A Decision was issued December 18, 2015 dismissing the Landlords' application with leave to reapply.

On November 18, 2015 the Landlords filed an Application for Review Consideration on the grounds that they were unable to attend the hearing for reasons that were beyond their control and could not have been anticipated. On November 26, 2015 a Review Consideration Decision was issued which granted the application and ordered the Original Hearing to be reconvened. The November 17, 2015 Decision was suspended pending the outcome of the reconvened hearing granted upon review.

These matters reconvened for 32 minutes on December 17, 2015. The hearing was conducted via teleconference and was attended by the Landlord G.H. The Landlord gave affirmed testimony that she would be representing the co-Landlord M.D. Therefore, for the remainder of this Decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

No one was in attendance on behalf of either Tenant. The Landlord testified that each Tenant was served notice of this application and this Review Hearing by registered mail. The Landlord submitted evidence of a copy of the registered mail envelope addressed to the Tenant S.G. which was returned to her unclaimed from the initial service back in September 2015. The packages to A.R. was delivered and never returned to the Landlords.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing. I agree with this policy.

Based on the undisputed evidence of the Landlords, I find that each Tenant was sufficiently served notice of the Landlords' application and this review hearing in accordance with Section 89(1) (c) of the Act. As such, I continued to hear the undisputed evidence of the Landlords.

The Landlords submitted volumes of documentary evidence to the Residential Tenancy Branch (RTB) as follows: 22 pages on September 11, 2015; 18 pages on November 12, 2015; 21 pages on November 12, 2015; 4 pages on November 18, 2015 along with the application for Review Consideration; 7 pages on November 30, 2015; and 44 pages on December 10, 2015. In absence of disputed testimony from the Tenants, I accepted the aforementioned documents as evidence for these proceedings.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to an Order of Possession?
2. Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlord H.G. testified that the rental unit is a house which used to be owned by her father. The Landlords, H.G. and her spouse M.D. purchased the house in August 2011 and title of the property was transferred into the co-Landlord's name M.D.

At the time the house was sold the Landlord's sister, S.G. was already residing in the home. In August 2011 the Landlords entered into a verbal tenancy agreement with S.G. that she would rent the property from them and pay rent of \$1,900.00 on the first of each month. No security deposit was required to be paid.

The Landlord stated that the Tenant failed to pay her rent regularly which caused the Landlords to suffer financially. As a result they served the Tenant several 1 Month Notices to end tenancy for cause and several 10 Day Notices for unpaid rent. Copies of several Notices to end tenancy were submitted in the Landlords' documentary evidence. A Proof of Service document was submitted indicating that a 10 Day Notice to End Tenancy for unpaid rent was personally served to the Tenant on September 1, 2015 at 11:00 a.m. in the presence of a witness.

The Landlord asserted that throughout the tenancy the Tenant allowed her daughter A.R. to occupy the rental property. The Landlord referenced several text messages which lead the Landlord to believe that the Tenant moved out of the house leaving the Tenant's daughter A.R. to occupy the house. The Landlord submitted evidence that

near the end of August 2015 the Tenant's daughter acknowledged that the Tenant was no longer residing in the house and that the Tenant's daughter entered into a verbal tenancy agreement agreeing to pay rent of \$1,900.00 per month.

The Landlord argued that the Tenant continues to access the rental property telling police that she still resides at this residence. The Tenant's daughter paid partial rent for September 2015 and then moved out after being served the 10 Day Notice on September 25, 2015. The Landlord argued that she had entered into a verbal tenancy agreement with the Tenant S.G. and then agreed to add A.R. as tenant. As a result she is seeking an Order of Possession and Monetary Order against both of them.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the undisputed terms of the verbal tenancy agreement between the applicant Landlords and respondent Tenants are recognized and enforceable under the *Residential Tenancy Act*.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case I accept the undisputed Proof of Service document indicating that a 10 Day Notice to End Tenancy for unpaid rent was personally served to the Tenant, S.G. on September 1, 2015 at 11:00 a.m. in the presence of a witness. Therefore, the effective date of the Notice was **September 11, 2015**.

The Tenants neither paid the rent in full nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective

date of the Notice, **September 11, 2015**, and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*.

Upon review of the documentary evidence I accept that the Tenants failed to pay their rent in full in accordance with the verbal tenancy agreement. However, there was insufficient evidence to prove the exact amount that was owed to the Landlords for rent.

Based on the above, I find there was sufficient evidence to grant the Landlords' request for an immediate Order of Possession. However, after consideration of the circumstances presented to me during the hearing, I find there was insufficient evidence to prove the exact amount owed to the Landlord's for rent. Therefore, I dismissed the Landlords' request for a Monetary Order with leave to reapply.

Section 82(3) of the *Act* stipulates that following the review, the director may confirm, vary or set aside the original decision or order. Accordingly, I order the November 18, 2015 Decision be **set aside**, pursuant to section 82(3) of the *Act*.

As stated above, I grant the Landlords' request for an immediate Order of Possession and I dismiss the Landlords' request for a Monetary Order with leave to reapply.

Conclusion

The November 18, 2015 Decision was **set aside**, pursuant to section 82(3) of the *Act*. The Landlords were partially successful with their application and were granted an immediate Order of Possession. The Landlords request for a Monetary Order was dismissed, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 17, 2015

Residential Tenancy Branch

